Supreme Court, U.S.
FILED
MAR 22 1993
OFFICE OF THE CLERK

92-1542

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

LORENZO W. TIJERINA,
Petitioner,

v.

YVONNE Q. STOWBRIDGE,
Respondent.

APPENDICES TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

VOLUME I
APPENDICES A THROUGH H
AND APPENDICES J THROUGH K

Lorenzo W. Tijerina,
Pro Se
800 Taylor Street,
Suite 200
Arlington, VA 22203
(703) 276-0112

Dated: March 22, 1993

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Appendix A

FILED
14
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

A-1

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

YVONNE Q. STOWBRIDGE,
Plaintiff-Appellee,

v.

LORENZO W. TIJERINA,
Defendant-Appellant.

No. 92-1871

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
T. S. Ellis, III, District Judge.
(CA-90-1537-A)

Submitted: September 24, 1992

Decided: December 23, 1992

Before PHILLIPS, NIEMEYER, and WILLIAMS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Lorenzo W. Tijerina, Appellant Pro Se. William Donald Patkus, Fairfax Station, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

BEST AVAILABLE COPY

OPINION

PER CURIAM:

Lorenzo W. Tijerina appeals from the district court's order denying his Motion for Relief from Judgment pursuant to Fed. R. Civ. P. 60(b). Though Tijerina filed his motion, seeking relief under clauses (1), (2), (3), and (6) of the Rule, within one year of the jury verdict which found him liable on charges of legal malpractice, fraud, and gross negligence, he did not file within a reasonable time. *See McLawhorn v. John W. Daniel & Co.*, 924 F.2d 535, 538 (4th Cir. 1991); *Central Operating Co. v. Utility Workers of America*, 491 F.2d 245, 253 (4th Cir. 1974). Therefore, we do not find an abuse of discretion and affirm the district court's order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

Appendix B

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
AUG - 5 1992
CLERK, U.S. DISTRICT COURT
ALEXANDRIA, VIRGINIA

YVONNE Q. STOWBRIDGE,
Plaintiff-Appellee,

v.

LORENZO W. TIJERINA,
Defendant-Appellant.

No. 91-1148

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
T. S. Ellis, III, District Judge.
(CA-90-1537-A)

Submitted: April 10, 1992

Decided: July 28, 1992

Before RUSSELL, PHILLIPS, and NIEMEYER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Lorenzo W. Tijerina, Appellant Pro Se. William Donald Patkus, Fairfax Station, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

BEST AVAILABLE COPY

OPINION

PER CURIAM:

Lorenzo W. Tijerina appeals from the district court's entry of judgment against him based on a jury verdict that he committed legal malpractice, fraud, and gross negligence. On appeal, Tijerina challenges the district court's denial of a motion for judgment notwithstanding the verdict or, alternatively, for a new trial and raises numerous claims about jurisdictional defects and trial court errors. We affirm.

Tijerina, a member of the Pennsylvania bar who maintains a law office in Arlington, Virginia, appeared below and during this appeal pro se. Tijerina, as of the time of this trial in May 1991, was not licensed to practice law in Virginia. Mrs. Yvonne Stowbridge alleged in her complaint that she contacted Tijerina to represent her in a domestic relations proceeding in Fairfax County Circuit Court and that he accepted a retainer but failed to, among other things, enter an appearance for her. Ultimately, a decree of divorce was entered in favor of Mrs. Stowbridge's estranged husband and she lost custody of both her children.

Viewing the evidence in the light most favorable to Mrs. Stowbridge, as we are required to do in reviewing a motion for judgment notwithstanding the verdict, *Taylor v. Home Ins. Co.*, 777 F.2d 849, 854 (4th Cir. 1985), *cert. denied*, 476 U.S. 1142 (1986), we agree with the district judge and find that the evidence was sufficient to support the jury's verdict. In addition, the district court did not abuse its discretion in denying the motion for a new trial. Similarly, we find that none of the district court's rulings resulted in the denial of substantial justice. *See Ingram Coal Co. v. Mower Ltd. Partnership*, 892 F.2d 363, 366 (4th Cir. 1989). We find no merit in Tijerina's other claims. Accordingly, we affirm the judgment and the district court's order denying post-trial relief.*

*We also deny Appellee's Motion to Dismiss the appeal and Tijerina's Motion for a Stay of the district court judgment.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

Appendix C

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

YVONNE Q. STOWBRIDGE,)

Plaintiff,)

v.) NO. 90-1537-A

LORENZO W. TIJERINA,)

Defendant.)

)

O R D E R

This matter is before the Court on defendant's motion for judgment notwithstanding the verdict or in the alternative for a new trial.

A motion for judgment notwithstanding the verdict should be denied if there was substantial evidence presented to convince a jury of reasonable persons to arrive at its finding. See Hamilton v. 1st Source Bank, 895 F2d 159, 162 (4th Cir. 1990). In this

case there was abundant evidence from which a reasonable jury could find each of the elements of fraud, gross negligence, and legal malpractice against defendant. Defendants' arguments are meritless.1

It is the Court's duty to grant a new

---

1 In particular, defendant's claim that he had no notice that Mr. Kavrukov would be called as an expert witness is unpersuasive. Defendant, a member of the Pennsylvania bar, filed no timely discovery with respect to expert witnesses. Defendant could also have presented his own expert. He chose to do neither. There was, therefore, no unfair surprise. Defendant also knew that Mr. Kavrukov would testify as a fact witness. The Court exercised its discretion to permit Mr. Kavrukov to testify as an expert limited to subjects within his competence and experience.

trial if the verdict is (i) against the clear weight of the evidence, (ii) is based upon evidence which is false, or (iii) will result in a miscarriage of justice. See Gill v. Rollins Protective Services Co., 836 F.2d 194, 196 (4th Cir. 1987). Having considered the evidence and the credibility of the witnesses, the Court concludes that the verdict was supported by the clear weight of the evidence and further finds no basis on which to conclude that any witness testified falsely or that the jury's verdict will result in a miscarriage of justice. Accordingly, plaintiff's motion is DENIED.

The Clerk is directed to forward a copy of this Order to all counsel of record.

/S/

T.S. Ellis, III

U.S. District Judge

Alexandria, Virginia

June 13, 1991

Appendix D

D-1

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

YVONNE Q. STOWBRIDGE

JUDGMENT IN A CIVIL CASE

v.

LORENZO W. TIJERINA

CASE NO: CA90-1537-A

[x] Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and jury has its verdict.

[] Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is hereby entered in favor of the plaintiff, Yvonne Q. Stowbridge, against the defendant, Lorenzo W. Tijerina.

Damages are awarded as follows:

compensatory - $40,750.00

punitive - $0

judgment is entered in accordance with the jury verdict.

May 30, 1991 Doris R. Casey, Clerk

_____ _____

Date Clerk

/S/

_____

(By) Deputy Clerk

Appendix E

E-1

IN UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

YVONNE Q. STOWBRIDGE

v. CA 90-1537-A

LORENZO W. TIJERINA

SCHEDULING ORDER*

A pretrial conference will be held in this action on Thursday, March 21, 1991, at 12:00 noon.

All discovery must be concluded by Friday, March 15, 1991.

Unless a later time has previously been allowed, any defendant who has not filed an answer must do so within ten (10) days from the date of this order.

All motions shall be noticed for hearing on the nearest possible Friday and prior to

---

* This order is being mailed to local counsel only.

the pretrial conference. (See Local Rule 11.) Ten (10) working days notice is required for motions to dismiss, for summary judgment, and for judgment on the pleadings.

Counsel should bring to the pretrial conference a list of the witnesses proposed to be called, a list of exhibits, and the exhibits themselves, premarked and ready for filing. No witness or exhibit not so listed and filed will be premitted at trial except for impeachment or rebuttal purposes. Objections to exhibits must be noted (they will be ruled on at trial) at the conference; otherwise the exhibits shall stand admitted in evidence. In addition, counsel should meet prior to the conference, exchange the aforementioned lists and copies of the exhibits, and prepare and bring to the conference a written stipulation of all uncontested facts.

No witness, expert or otherwise, will be

permitted to testify who, in response to a request for his identity, has not been identified in time to allow his deposition to be taken or the substance of his knowledge ascertained, or, in the case of an expert, to allow the facts relied upon and opinions held by him to be obtained by F. R. Civ. P. 26(b)(4)(A) or deposition prior to the discovery cutoff.

Depositions, interrogatories, requests for documents and admissions, and answers and responses thereto, shall not be filed except on order of the court or for use in this action in connection with a motion for summary judgment or at the pretrial as an exhibit. F. R. Civ. P. 5(d).

In non-jury cases counsel should file with the clerk at the beginning of the trial written proposed findings of fact and conclusions of law.

The trial of this case will be set for a

day certain, not later than three to eight weeks from the date of the pretrial conference.

/S/

U.S. District Judge

Alexandria, Virginia
January 2nd, 1991

Appendix F

VIRGINIA:

In the Court of Appeals of Virginia on Tuesday the 18th day of June, 1991.

Filed: Aug 2 1991 Warren E. Barry, Clerk of the Circuit Court of Fairfax County, VA

Yvonne Quiones Stowbridge, Appellant,

against Record No. 1687-90-4

Circuit Court No. 110882

Robert G. Stowbridge, Appellee.

Upon a Petition for Rehearing

Before Judges Duff, Moon and Willis

This cause came before the panel upon appellant's petition for rehearing of our memorandum opinion of May 14, 1991, pursuant to Rule 5A:33 of the Supreme Court of Virginia. The petition is denied for the reasons which follow, such reasons being incorporated as a supplement to the aforesaid memorandum opinion.

Appellant asserts that the panel's opinion does not accurately reflect the issues presented on appeal in both the brief and argument. While the two issues stated in the opinion were inadvertently not phrased as presented in appellant's brief, they were considered as such by the panel. However, in the interest of accuracy the opinion is supplemented as follows:

(1) We do not find an abuse of discretion by the trial court's action on June 8, 1990, changing the pendente lite custody of Carla from her mother to her father. The initial pendente lite order of June 14, 1989, which awarded custody of Carla to Mrs. Stowbridge, also expressly provided for an evaluation of both parties and the minor children by Dr. Stanton E. Samenow, with a report to be made to the court within 60 days, if possible. The record shows this evaluation was rendered

impossible by Mrs. Stowbridge's actions in leaving the jurisdiction for Puerto Rico with Carla. At the time of the June 8, 1990 hearing, the trial court had received Dr. Samenow's comprehensive evaluation of January 11, 1990, which did not include interviews with Mrs. Stowbridge or Carla. The court also was aware from testimony taken a year earlier, that Mrs. Stowbridge was under the care of Dr. Granger, a psychiatrist, and was on medication. Her continued absence from the area could have well indicated that both her therapy and medication were in jeopardy.

Furthermore, although there exists a dispute between the parties as to proper notice of the various hearings, the record satisfies us that Mrs. Stowbridge was represented by counsel at all times and that proper notice was given to counsel of the hearing of June 8, 1990. No evidence was

presented by Mrs. Stowbridge. Under the totality of these circumstances, we find that the court had sufficient evidence before it to conclude that it would be in Carla's best interests to transfer her custody, pendente lite, to her father.

(2) Appellant next contends that it was an abuse of discretion for the trial court on July 20, 1990, to award permanent custody of both children to their father without a hearing as to the best interests of the children and as a punishment to the wife. The record reveals that the hearing of July 20, 1990, was properly noticed; that Mrs. Stowbridge did not appear nor offer any evidence. The court was then aware that Mrs. Stowbridge had taken Carla to Puerto Rico. This was the first time that the issue of permanent, as distinguished from pendente lite, custody was to be determined.

The court had before it the previous

testimony at the pendente lite hearing, the evaluation of Dr. Samenow, which referenced the nature and circumstances of Mrs. Stowbridge's violent propensities and her attempted suicide, as well as her subsequent disappearance. This evidence was ample to support a conclusion that Carla's best interests would be served by her return to the jurisdiction of the court and the custody of her father. Despite the inference that might be drawn from the language of the final decree, we believe it apparent that the court felt the best interests of the children would be served by placing their custody with their father. See Rowlee v. Rowlee, 211 Va. 689, 179 S.E2d 461 (1971).

A Copy,

Teste:

Patricia G. Davis, Clerk

By: /S/ Deputy Clerk

Appendix G

COURT OF APPEALS OF VIRGINIA

Present: Judges Duff, Moon and Willis

Argued at Alexandria, Virginia

Filed: Aug 2 1991 PM 3:48

Warren E. Barry, Clerk

of the Circuit Court of

Fairfax County, VA

YVONNE QUIONES STOWBRIDGE

v. Record No. 1687-90-4

ROBERT GRAF STOWBRIDGE

MEMORANDUM OPINION* BY JUDGE CHARLES H. DUFF

MAY 14, 1991

FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

Quinlan H. Hancock, Judge

William D. Patkus, for appellant.

David K. Cook, for appellee.

---

* Pursuant to Code Sec. 17-116.010 this opinion is not designed for publication.

This appeal arises from the entry of a final decree of divorce, awarded custody of

the minor children of the parties to their father. Mrs. Stowbridge claims the trial court erred (1) in denying her motion for a continuance at the divorce hearing, and (2) in transferring custody of one of the minor children, whose custody had previously been awarded to Mrs. Stowbridge pendent lite, to Mr. Stowbridge.

The granting or denial of a continuance is within the sound discretion of the trial court, after considering all the circumstances of the case. McNew v. Dunn, 233 Va. 11, 353 S.E.2d 603 (9188). A trial court's decision regarding a continuance will not be disturbed on appeal unless it is plainly wrong. Mason v. Commonwealth, 7 Va. App. 339, 373 S.E.2d 603. The record reveals that Mrs. Stowbridge was well aware of the proceedings in this case, and that she left Virginia without informing her husband or her attorney of her whereabouts

while this matter was pending. We find, therefore, after considering all of the circumstances of the present case, that the trial judge did not abuse his discretion in refusing to continue the entry of the final decree.

We further find from the testimony presented during the pendente lite hearing, Dr. Samenow's evaluation, and the evidence regarding Mrs. Stowbridge's mental condition, that the trial judge had ample evidence before him to conclude that transferring custody of Carla to her father would be in the best interest.

Accordingly, the decision of the trial court is Affirmed.

A copy,

Teste:

Patricia G. Davis

/S/

Deputy Clerk

Appendix H

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

YVONNE QUINONES STOWBRIDGE:

Complainant :

vs : CHAN. NO. 110882

ROBERT GRAF STOWBRIDGE :

Defendant :

DECREE OF DIVORCE, A VINCULO MATRIMONII

THIS CAUSE came on to be heard this day upon the Bill of Complaint filed by Complainant; upon the Cross-Bill of Complaint filed by Defendant; upon the report of the Commissioner in Chancery, to which there are attached depositions of witnesses to be read in behalf of the Defendant; upon the findings of fact based upon the issues raised by the pleadings herein; upon the Defendant's Motion for custody of the minor children born of the marriage; and upon argument of Counsel; and

IT APPEARING TO THE COURT, independently

of the admissions of either party in the pleadings or otherwise, that the Complainant and the Defendant were lawfully married on October 8, 1976, in Bethesda, Maryland; that there were two children born of the marriage, namely, Andria Stowbridge, born September 9, 1977, and Carla Stowbridge, born January 15, 1981; that neither party is a member of the United States Armed Forces; that both parties are over the age of eighteen (18); that the Defendant is and has been an actual and bona fide resident of and domiciled in the County of Fairfax, Commonwealth of Virginia for more than six months immediately preceding the institution of this suit; that on or about April 10, 1989 the parties hereto separated and have lived separate and apart, without any cohabitation and without interruption from the period in time to and including the present date, and there is no hope or

possibility of any reconciliation between them; and that the Defendant is entitled to the relief prayed for; and, further,

IT APPEARING TO THE COURT that the best interest of the minor children would be served by their custody being awarded to the Defendant by virtue of the Complainant's complete violation of the pendente lite Order entered herein on June 14, 1989; and, further,

IT APPEARING TO THE COURT that Section 20-60.3 of the 1950 Code of Virginia, as amended, is inapplicable because neither party is directed to provide health insurance for the other or for the parties' children; nor to pay spousal or child support by Order of this Court or by separation agreement confirmed herein, it is

ADJUDGED, ORDERED AND DECREED that the Complainant's Bill of Complaint is hereby dismissed; that the Defendant is hereby

awarded a divorce, a vinculo matrimonii, from the Complainant on the ground that the parties have lived separate and apart for more than one year without any cohabitation and without interruption; and that the bonds of matrimony heretofore existing between said parties are hereby forever dissolved; and it is further

ADJUDGED, ORDERED AND DECREED that custody of the parties' minor children, namely, ANDRIA STOWBRIDGE, born September 9, 1977 and CARLA STOWBRIDGE, born September 15, 1981 is hereby awarded to the Defendant, ROBERT GRAF STOWBRIDGE; and that the Complainant, YVONNE QUINONES STOWBRIDGE, is hereby ordered to immediately return their daughter, CARLA STOWBRIDGE, to the custody of ROBERT GRAF STOWBRIDGE; and that the Complainant shall have no visitation with ANDRIA, except by telephone, until further Order of this Court.

AND THIS ORDER IS FINAL.

AND THIS CAUSE IS ENDED AND REMOVED FROM THE DOCKET ENTERED: July 20, 1990

/S/

QUINLAN H. HANCOCK, JUDGE

I ASK FOR THIS:

/S/

David K. Cook, Esq.
11480 Sunset Hills Road
Reston, VA 22090
Counsel for Defendant
703/689-2212

SEEN:

/S/

Ted Kavrukov, Esq.
2055 N. 15th Street,
Suite 300
Arlington, VA 22201
Counsel for Complainant

703/524-3333

Appendix J

J-1

David K. Cook

ATTORNEY AT LAW

11480 Sunset Hills Road

Reston, Virginia 22090

(703) 689-2212

June 13, 1990

Ted Kavrukov, Esq.

2055 N. 15th Street

Suite 300

Arlington, VA 22201

Re: Stowbridge v Stowbridge

Dear Mr. Kavrukov:

Pursuant to our telephone conversation, enclosed is the revised Decree of Divorce in accordance with Judge Hancock's ruling.

I would appreciate your endorsing the order at your earliest convenience and returning it to me so that I may submit it to Judge Hancock.

Thank you for your assistance.

Sincerely,

J-2

/S/

DAVID K. COOK

cc: Mr. Stowbridge

Appendix K

K-1

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

ALEXANDRIA DIVISION

YVONNE Q. STOWBRIDGE,)

Plaintiff,)

v.) NO. 90-1537-A

LORENZO W. TIJERINA,)

Defendant.)

)

PLAINTIFF'S LIST OF WITNESSES

YVONNE Q. STOWBRIDGE

TED KAVRUKOV, ESQ.

MANUEL E. MORAZA CHOISNE

WILLIAM SPENCER

LORENZO W. TIJERINA

EDELMIRA E. TORIBIO

/S/

William D. Patkus, Esq.

12025 Rusty Road

K-2

Fairfax Station, VA 22039

(703) 830-9066

Counsel for Plaintiff